

1 James Graf
2 Fed. Reg. No.: 29779-112
3 FCC Lompoc Camp
3705 West Farm Road
Lompoc, Ca 93436



8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA

10
11 UNITED STATES OF AMERICA,) NO: CR 04-00492-MCS
12 Plaintiff,) MOTION FOR OFFSET
13 v.) OF RESTITUTION
14 JAMES GRAF,) [PURSUANT TO
15 Defendant.) 18 U.S.C. § 3664(j)(2)]
16 _____)
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19 Defendant James Graf, a federal prisoner without counsel,
20 moves this Honorable Court on his Motion For Offset Of
Restitution, pursuant to 18 U.S.C. § 3664(j)(2).

21 This motion is based on the attached memorandum of points
22 and authorities, accompanying exhibits, the files and records in
23 this case and any other such evidence or arguments as may be
24 requested by the Court.

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In support of granting Defendant's motion, the following is stated.

Respectfully submitted,

Dated:

James Graf,
Defendant.

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 On February 5, 2007, the District Court sentenced Defendant
4 to 300 months imprisonment and three years supervised release.
5 It also imposed a restitution order in the amount of
6 \$20,458,419.47.

7 Since such time, there has been approximately \$30 million
8 collected, which exceeds the restitution under the Mandatory
9 Victims Restitution Act. This amount collected now entitles
10 Defendant to have the restitution offset pursuant to 18 U.S.C. §
11 3664(j)(2).

12 **II. BACKGROUND AND HISTORY**

13 In December 2001, the United States Secretary of Labor
14 ("Secretary") brought ERISA action in the United States District
15 Court for the District of Nevada in Reno. The civil lawsuit
16 alleged breach of various fiduciary responsibilities and duties
17 involving a Multiple Employer Welfare Arrangement ("MEWA") which
18 allowed small businesses to band together to purchase health
19 insurance by participating in various trade associations. These
20 associations were marketed under a limited liability company
21 referred to as Employers Mutual. These health plans were
22 marketed by insurance agents ("producers") who sold the
23 insurance plans to individuals and employers.

24 The Secretary's lawsuit named Defendant and several
25 individuals and the insurance producers. The Court, on behalf
26 of the Secretary, appointed Thomas Dillon as the Independent
27 Fiduciary of Employers Mutual plans. See Chao v. Graf, 2002 U.S.
28 Dist. LEXIS 28329 (D. Nev. 2002), No: CV-N-01-00698-DWH (RAM).

1 Dillon was given court authority to marshal the assets of
2 Employers Mutual, LLC., the 16 Associations, and the health
3 plans. He exercised his authority to pursue all legitimate
4 claims on behalf of Employers Mutual and the other entities and
5 to pursue the recovery of assets against defendants and third
6 parties.

7 Following the Chao civil lawsuit, a criminal referral was
8 made resulting in a 2004 indictment against Defendant and two
9 other individuals. On February 5, 2007, Defendant was sentenced
10 to 300 months imprisonment, 3 years supervised release, and
11 \$20,458,419.47 in restitution. During his incarceration,
12 Defendant has been making restitution payments under the Inmate
13 Financial Responsibility Program ("IFRP").

14 Since such time, Dillon, in his capacity as Independent
15 Fiduciary, filed various civil lawsuits in the United States
16 District Court for the District of Nevada, Reno. See Dillon v.
17 Graf, et al, CV-03-0119-DAE-VPC.

18 These actions alleged that several defendant insurance
19 agent/brokers ("producers") had engaged in a nationwide scheme
20 of insurance fraud, selling non-ERISA or unauthorized health
21 insurance. See Dillon v. Westport Insurance Co., 2005 U.S.
22 Dist. LEXIS 60159, No: CV-N-04-0480-DAE-VPC (D.C. Nev. 2005).
23 These various actions resulted in settlements.

24 These subsequent civil settlements culminate and in various
25 stages throughout the years, Dillon obtained court orders to
26 disburse the recovered proceeds.

27 Then in 2022, Dillon sought a final order to disburse the
28 remaining proceeds. The court records reveal that Dillon had

1 received approximately \$30 million in Employers Mutual proceeds,
2 which was then disbursed to the victims. This collected amount
3 exceeds the restitution order by the court. Defendant now
4 requests the court for an Offset.

5 **III. ARGUMENT**

6 **A. Restitution**

7 Under the Mandatory Victim Restoration Act ("MVRA") the
8 court "shall [] reduce [] restitution by any amount later
9 recovered as compensatory damages for the same loss by the
10 victims in ... any federal civil proceeding; and ... any state
11 civil proceedings." 18 U.S.C. § 3664(j)(2). See e.g. United
12 States v. Doe, 374 F.3d 851, 856 (9th Cir. 2004). Offset is
13 only proper, as here, where the victim receives the funds.
14 United States v. Bright, 353 F.3d 1114, 1122-23 (9th Cir. 2004).
15 The court may deny offset if proof is ambiguous. United States
16 v. Bush, 252 F.3d 959, 963 (9th Cir. 2001).

17 This is not the case here. The civil record is clear as to
18 the collected amount being in excess of Defendant's restitution
19 and that the amount has been disbursed to the victims in the
20 amount of \$30,048,169.81. See United States v. Catherine, 55
21 F.3d 1462, 1465 (9th Cir. 1995) (requiring court to offset
22 restitution by value of property "as of the date the victim took
23 control of the property.") (emphasis in original, quotations
24 omitted). See also, United States v. May, 500 F. App'x 458,
25 464-65 (6th Cir. 2012) (affirming the district court's
26 conclusion that the defendant was entitled to an offset of any
27 amount paid to the victim because of a settlement agreement).

18 U.S.C. § 3664(j)(2)(A) provides: "Any amount paid to a
victim under an order of restitution shall be reduced by an
amount later recovered ... for the same loss by the victim in
... any federal civil proceeding." A victim is not entitled to
double recovery of its losses. See e.g. United States v. Elson,
577 F.3d 713, 734 (6th Cir. 2009); United States v. McDaniel,
398 F.3d 611, 613 (9th Cir. 2002) ("The purpose of § 3664(j)(2)
is to prevent double recovery by a victim.") (citation omitted).
Since the amount recovered exceeds the total restitution, any
amount collected now becomes double recovery.

11 B. Judicial Notice

12 Defendant is a federal prisoner and without counsel. The
13 prison does not allow inmates access to PACER. He requests
14 judicial notice of information of the collected and disbursed
15 funds pertaining to the offset of restitution in Chao v. Graf,
16 et al., 3:01-CV-00698-DAE-VPC [Dkt. 403, 416]; Dillon v. Graf,
17 3:03-CV-00119-DAE-VPC [Dkt. 1647]. See Fed. R. Evid. 201(b).

18 Under Fed. R. Evid. 201, the court can judicially notice a
19 fact that is not subject to reasonable dispute because it: (1)
20 is generally known within trial court's territorial
21 jurisdiction; or (2) can be accurately and readily determined
22 from sources whose accuracy cannot reasonably be questioned.
23 Fed. R. Evid 201(b). There is no dispute as to the amounts.
24 See GemCap Lending, LLC., v. Quarries & Brady, LLP., 269 F. Supp.
25 3d 1007, 1019 (C.D. Cal. 2017) ("judicial notice appropriate
26 where court filings relevant to the action); Khoja, 899 F.3d at
27 1002 (A defendant may seek to incorporate a document if it
28 refers to the basis of the claim). See Reyn's Pasta Bella, LLC

1 v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006) ("we
2 may take judicial notice of court filings and other matters of
3 public record."); Grant v. Aurora Load Servs, Inc., 736 F. Supp.
4 2d 1257, 1264 (C.D. Cal. 2010) (collecting cases for the
5 proposition that publicly recorded documents are judicially
6 noticeable).

IV. CONCLUSION

8 For all the foregoing reasons and conclusions of law, the
9 Court is urged to offset restitution.

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11 Respectfully submitted,

Dated: 3/11/2024

James Graf,
Defendant.

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CERTIFICATE OF SERVICE

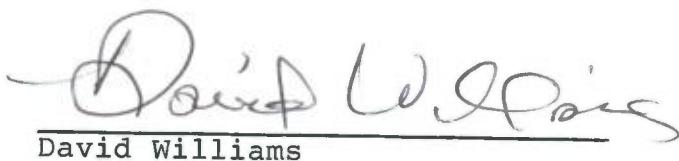
I, David Williams, am over the age of 18 years and I am not a party to this action. I hereby certify that on this 11th day of March, 2024, that I sent the foregoing via first-class postage, prepaid, or other delivery charges prepaid, by depositing said documents herein-listed with prison authorities at the Mail Room of the Lompoc Federal Correctional Complex Satellite Camp, for mailing through the United States Postal Service, mailing copies of the following:

MOTION FOR OFFSET OF RESTITUTION
[PURSUANT TO 18 U.S.C. § 3664(j)(2)]

to the following individual(s), party, s and or entity(s)"

UNITED STATES ATTORNEY'S OFFICE
312 SPRING STREET
LOS ANGELES, CA 90012

I certify under the penalty of perjury that the foregoing is true and correct.



David Williams

JAMES GRAF
FED. REG. NO.: 29779-112
FCC LOMPOC CAMP
3705 WEST FARM ROAD
LOMPOC, CA 93436



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
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